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7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 THE NORTHWEST RAILWAY
11 MUSEUM,

12 Plaintiff,

13 v.

14 INDIAN HARBOR INSURANCE
15 COMPANY, et al.,

16 Defendants.

CASE NO. C17-1060JLR

ORDER DENYING MOTION TO
REMAND

17 I. INTRODUCTION

18 Before the court is Plaintiff The Northwest Railway Museum's ("the Museum")
19 motion to remand. (Mot. (Dkt. # 8).) The court has considered the parties' submissions
20 in support of and in opposition to the motion, the relevant portions of the record, and the
21 applicable law. Being fully advised,¹ the court denies the Museum's motion.

22 ¹ No party requests oral argument, and the court concludes that oral argument would not
be helpful to its disposition of the motion. See Local Rules W.D. Wash. LCR 7(b)(4).

II. BACKGROUND

On August 8, 2016, Robin Ann Roettger sued the City of Snoqualmie, Washington, for injuries she sustained after falling on a public sidewalk. (*See generally* Roettger Compl. (Dkt. # 11-1).) In her complaint, Ms. Roettger alleges that she required multiple surgeries and “many invasive and expensive medical procedures.” (*Id.* ¶ 5.1; *see* Murphy Decl. (Dkt. # 11) ¶ 14.) The City of Snoqualmie, in turn, sued the Museum for complete indemnification, alleging either that the Museum agreed to a hold harmless stipulation as part of its permit for using the sidewalk on which Ms. Roettger fell or that the Museum had actual control over the sidewalk and failed to warn Ms. Roettger. (Snoqualmie Compl. (Dkt. # 11-2) ¶¶ 8.1-8.8.)

The Museum then filed a liability insurance claim with Defendant Indian Harbor Insurance Company (“Indian Harbor”). (Compl. (Dkt. # 1-2) ¶ 16.) Indian Harbor refused to cover the Museum’s potential liability from the City of Snoqualmie’s lawsuit. (*Id.* ¶ 17.) In response, the Museum filed this lawsuit against Indian Harbor and its parent corporation Defendant XL Specialty Insurance Company (collectively, “Defendants”) in King County Superior Court for (1) breach of contract, (2) bad faith conduct, (3) unreasonable denial of coverage under the Insurance Fair Conduct Act (“IFCA”), RCW 48.30.015, and (4) violations of the Consumer Protection Act (“CPA”), RCW ch. 19.86. (*See generally* Compl.)

Defendants removed the action based on diversity subject matter jurisdiction. (Not. of Removal (Dkt. # 1).) The Museum now moves to remand because (1) Defendants failed to prove complete diversity of citizenship among the parties, and

1 (2) Defendants failed to prove an amount in controversy over \$75,000.00. (Mot. at 3-4.)

2 The court now considers the Museum's motion.

3 III. ANALYSIS

4 A. Legal Standards

5 A court has subject matter jurisdiction over an action when there is complete
6 diversity of citizenship among the parties and the amount in controversy exceeds
7 \$75,000.00. *Abrego Abrego v. The Dow Chem. Co.*, 443 F.3d 676, 679 (9th Cir. 2006)
8 (citing 28 U.S.C. § 1332(a)). Removal from state court to federal court is proper where
9 the federal court would have original jurisdiction over the state court action. *Id.* at
10 679-80 (citing 28 U.S.C. § 1441(a)). However, courts strictly construe the removal
11 statute against removal jurisdiction and must reject jurisdiction if there is any doubt as to
12 the right of removal in the first instance. *Gaus v. Miles, Inc.*, 980 F.2d 564, 566 (9th Cir.
13 1992). "The 'strong presumption' against removal jurisdiction means that the defendant
14 always has the burden of establishing that removal is proper." *Id.* (quoting *St. Paul*
15 *Mercury Indem. Co. v. Red Cab Co.*, 303 U.S. 283, 288-290 (1938)).

16 B. Complete Diversity of the Parties

17 The Museum disputes the court's jurisdiction by arguing that Defendants made an
18 insufficient showing of complete diversity of citizenship in their notice of removal.
19 (Mot. at 3.) Diversity subject matter jurisdiction requires complete diversity of
20 citizenship among the parties. *Caterpillar Inc. v. Lewis*, 519 U.S. 61, 68 (1996); 28
21 U.S.C. § 1332(a)(1). Complete diversity exists when the state citizenship of each
22 plaintiff is different from the state citizenship of each defendant. *Id.* (citing 28 U.S.C.

1 § 1332(a)). A corporation can be a citizen in two states: (1) its state of incorporation and
2 (2) the state where its principal place of business, typically its headquarters, is located.
3 28 U.S.C. § 1332(c)(1); *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010) (concluding that a
4 principal place of business is “normally” a corporation’s headquarters).

5 Although Defendants’ notice of removal could be clearer, Defendants state that
6 they are (1) incorporated in Delaware, and (2) citizens of states other than Washington.
7 (*See* Not. of Removal ¶ 6.) Further, Defendants’ counsel attests that Defendants are
8 incorporated in Delaware with their principal places of business in Stamford,
9 Connecticut. (Murphy Decl. ¶¶ 3-4.) Defendants allege the same in their counterclaims.
10 (Answer at 8.) Because the Museum is a citizen of Washington (*see* Compl. ¶ 1; *see also*
11 Not. of Removal ¶ 6), complete diversity of citizenship exists between Defendants and
12 the Museum. Indeed, the Museum implicitly acknowledges as much by abandoning its
13 diversity of citizenship argument in its reply memorandum. (*See* Reply (Dkt. # 12).)
14 Thus, the court concludes that Defendants have established complete diversity of
15 citizenship among the parties.

16 C. The Amount in Controversy

17 The remaining issue is whether the amount in controversy exceeds \$75,000.00.
18 *See* 28 U.S.C. § 1332(a). The Museum argues that the court should remand the action
19 because Defendants failed to demonstrate the required amount in controversy by a
20 preponderance of the evidence. (Mot. at 3-4.) Defendants respond that the potential
21 losses from Snoqualmie’s indemnification claim, which necessarily include Ms.
22 Roettger’s claims against the city, will be greater than \$75,000.00. (Resp. (Dkt. # 10) at

1 9.) Defendants support their argument with a declaration from their counsel. (*See*
2 Murphy Decl. ¶¶ 14-19.) The Museum has not filed any evidence to support its
3 contention that the amount in controversy is less than \$75,000.00. (*See generally* Dkt.)

4 “Where, as here, ‘the complaint does not demand a dollar amount, the removing
5 defendant bears the burden of proving by a preponderance of evidence that the amount in
6 controversy exceeds \$[75],000[.00].’” *Kroske v. U.S. Bank Corp.*, 432 F.3d 976, 980
7 (9th Cir. 2005) (quoting *Singer v. State Farm Mut. Auto. Ins. Co.*, 116 F.3d 373, 376 (9th
8 Cir. 1997)) (first alteration in original); *see also* 28 U.S.C. § 1446(c)(2)(B)
9 (“[R]emoval . . . is proper on the basis of an amount in controversy . . . if the district court
10 finds, by the preponderance of the evidence, that the amount in controversy exceeds the
11 amount specified in section 1332(a).”). To support their asserted amounts in controversy,
12 both “parties may submit evidence outside the complaint, including affidavits or
13 declarations, or other ‘summary-judgment-type evidence relevant to the amount in
14 controversy at the time of removal.’” *Ibarra v. Manheim Investments, Inc.*, 775 F.3d
15 1193, 1197 (9th Cir. 2015) (quoting *Singer*, 116 F.3d at 377). The court should test each
16 party’s alleged amount in controversy “by consideration of real evidence and the reality
17 of what is at stake in the litigation, using reasonable assumptions underlying the
18 defendant’s theory of damages exposure.” *Id.* at 1198.

19 The Museum seeks “coverage and payment of the actual damages” it sustained
20 from Defendants. (Compl. ¶ 31; Murphy Decl. ¶ 10.) Defendants reasonably anticipate
21 that these damages will include damages and expenses arising from Ms. Roettger’s
22 lawsuit. (Murphy Decl. ¶ 10.) Based on Defendants’ counsel’s experience defending

1 hundreds of civil suits in state and federal court and his review of Ms. Roettger's
2 complaint, which includes a description of her alleged injuries, multiple surgeries, and
3 "many expensive medical procedures," Defendants' counsel estimates Ms. Roettger's
4 general and special damages to be a minimum of \$25,000.00. (*Id.* ¶¶ 7-8, 13-14; *see*
5 Roettger Compl.) Defendants' counsel also estimates the City of Snoqualmie's
6 attorney's fees from litigating Ms. Roettger's suit to be a minimum of \$25,000.00. (*Id.*
7 ¶ 15.) Defendants' counsel asserts that adding those aforementioned items together
8 places the amount in controversy "well in excess of the \$75,000[.00] threshold."
9 (Murphy Decl. ¶ 16.)

10 The court concludes that Defendants' estimated amount of contract damages under
11 the insurance policy is reasonable in light of the injuries Ms. Roettger claims and the fees
12 and costs the City of Snoqualmie is likely to incur. *See Ibarra*, 775 F.3d at 1198; *see*
13 *also, e.g., Ansley v. Metro. Life Ins. Co.*, 215 F.R.D. 575, 578 (D. Ariz. 2003) (denying
14 remand based in part on defendant's counsel's undisputed affidavit regarding amounts for
15 attorney's fees and damages for breach and bad faith); *Pereza v. Progressive Direct Ins.*
16 *Co.*, No. 2:15-CV-77JCM (VCF), 2015 WL 1549270, at *3-5 (D. Nev. Apr. 8, 2015)
17 (denying remand when plaintiff alleged bad faith conduct, which allowed punitive
18 damages, and demanded medical expenses of around \$31,000.00).

19 Further, when plaintiffs request treble damages under IFCA, as the Museum has
20 here (*see* Compl. at 10), the court trebles the amounts alleged to determine the amount in
21 controversy. *See, e.g., Rain v. Ameriprise Auto & Home Ins. Agency, Inc.*,
22 No. C14-5088RJB, 2014 WL 1047244, at *3 (W.D. Wash. Mar. 18, 2014) (denying

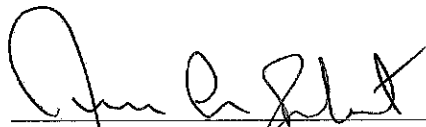
1 remand when plaintiffs requested treble damages and defendants showed that plaintiffs'
2 damages would be at least \$41,000.00 before trebling); *Lim v. Nat'l Gen. Ins. Co.*,
3 No. C15-0383RSL, 2015 WL 12025326, at *2 (W.D. Wash. Apr. 30, 2015) (denying
4 remand when plaintiff requested treble damages and actual damages of \$50,000.00).

5 Based on the foregoing analysis, the court concludes that Defendants establish by
6 a preponderance of the evidence that the amount in controversy exceeds \$75,000.00. The
7 Museum fails to counter Defendants' counsel's declaration or offer evidence of their
8 own. (*See generally* Dkt.) Because Defendants also establish complete diversity of
9 citizenship among the parties, *supra* § IV.B, the court concludes that it has subject matter
10 jurisdiction over this matter and denies the motion to remand.

11 IV. CONCLUSION

12 For the foregoing reasons, the court DENIES the Museum's motion to remand
13 (Dkt. # 8).

14 Dated this 4th day of October, 2017.

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17 JAMES L. ROBART
United States District Judge
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